

DELEGATED APPLICATION REPORT

Ward: Battle

App Ref: 220515/CLE

Address: 59 Prince of Wales Avenue, Reading, RG30 2UJ

Proposals: Certificate of Lawfulness for accommodating up to 44 children at the day nursery, exceeding 24 children in non-compliance with condition no. 3 of planning permission 010324/VAR (Amended Description)

Case Officer: Mr David Brett

Applicant: Mrs H Schofield

Date received (valid from): 05/04/2022

Target Date: 20/07/2022, extension of time on decision agreed from 31/05/2022

Site Description and Surrounding Area

The application site is a two building at the corner of Prince of Wales Avenue and Edinburgh Road. The building is formerly a residential dwelling that has been in use as a nursery since 1993. The nursery in question is Little Tots Nursery (referred to as “the setting” in this report). The surrounding area is predominantly residential with a mix of semi-detached dwellings and terraced rows. The application site is 300m east of Battle Primary School.

The application site is not listed, nor in a conservation area.

Description of Use or Development

This application seeks to demonstrate non-compliance with condition 3 of approval 01/00321/VARIAT for the variation of condition of Planning Consent 93/00382 to increase number of children from 20 to 24. Condition 3 of approval 01/00321/VARIAT (reference number 010324/VAR) is as follows:

- *At no time when the premises are in use for the purpose hereby approved shall the number of children attending exceed 24 unless otherwise agreed in writing by the Local Planning Authority.*

The applicant’s case is that nursery has been accommodating more than 24 children since at least 2008, therefore not complying with condition 3 of approval 01/00321/VARIAT and that this has been ongoing for more than 10 years before the date of the application (05/04/2022).

Moreover, the applicant is also specifying that the nursery has been accommodating up to 44 children and that this has occurred during the same time period.

As such, the certificate is sought on a two-fold basis: 1) non-compliance with the ‘shall not exceed 24 children’ condition and 2) up to 44 children is lawful too.

The onus is on the applicant to demonstrate that on the balance of probabilities that this statement is true through sufficiently precise and unambiguous evidence.

Relevant Planning History

930668/VAR - Use of ground floor as day nursery - relaxation of condition 3 of consent 87/TP/1061 appeal 1042 to increase from 16 to 20 children. - Application Permitted on 02/07/1993

991320/FUL - Construction of New Gable Roof and Dormer Window to Provide Additional Bedroom. - Application Permitted on 07/04/2000

010324/VAR - Variation of Condition on Planning Consent 93/00382 to increase number of children from 20 to 24 - Application Permitted on 24/05/2001

Condition 3 (no reason for the condition is specified on the decision notice)

3. At no time when the premises are in use for the purpose hereby approved shall the number of children attending exceed 24 unless otherwise agreed in writing by the Local Planning Authority.

070581/VAR - Variation of Condition 3 of planning permission 01/00231/VARIAT to increase the existing child care provision of 24 children to provide an additional baby unit for 14 babies. - Application Withdrawn on 01/06/2007

Consultation Responses

There are no statutory consultation requirements for a Certificate of Lawfulness application.

Relevant Planning Policy and Guidance

Section 10 of the Planning and Compensation Act 1991 established a procedure that enables anyone who wishes to do so, to apply to the local planning authority to determine whether a proposed use or operation, or an existing operational development or an existing use of land, or any other matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted, is lawful, and is so, be granted a certificate to that effect.

A Lawful Development Certificate is a legal document stating the lawfulness of past, present or future development. If granted by the local planning authority, the certificate means that enforcement action cannot be carried out to the development referred to in the certificate. However, the certificate will not protect from enforcement action by the planning authority if the specified use or development is then changed 'materially' without a planning application for it.

The certificate is not planning permission. The planning merits of use, operation or activity in the application are not relevant. The issue of a certificate depends entirely on factual evidence about the history and planning status of the building or other land and the interpretation of any relevant planning law or judicial authority. The responsibility is on the applicant to provide evidence to support the application.

The NPPG states that 'The applicant is responsible for providing sufficient information to support an application. In the case of applications for existing use (section 191 of the Town and Country Planning Act 1990), if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicants version of events less than probable, there is no good reason to

refuse the application, provided the applicants evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability’.

Consultations

Brighter Futures for Children, Under 5s Service - Response received on 19/04/2022

- The setting has been Ofsted registered as Little Tots in 2007 under registration number EY349641. Their registration has always enabled them to care for 44 children under the age of 8.

Reading Borough Council, Planning Enforcement - Response received on 22/04/2022

- Having checked our records (which go back to 2003) I can confirm that we have had no dealings with this property.

Reading Borough Council, Environmental Health - Response received on 04/05/2022

- We have no nuisance complaints on our records regarding this premises.

Reading Borough Council, Legal Services - Response received on 19/07/2022

- Agree with the recommendation to grant. It should be made clear that the maximum capacity would be between the original number of children and maximum to cement the amount of child that are permitted.

Submitted Evidence

The applicant has provided the following evidence to support this application:

- Location Plan
- Application Statement - Little Tots Nursery
- Registers from March 2008 to present
- Ofsted Inspection Reports
- Statutory Declaration

Received on 05/04/2022

Assessment

In order for a certificate of lawfulness to be granted for this application, the applicant must first demonstrate that the nursery has not complied with condition 3 of planning approval 010324/VAR. The PPG makes the position clear on how the evidence submitted is to be considered. It says:-

“In the case of applications for existing use, if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant’s version of events less than probable, there is no good reason to refuse the application, provided the applicant’s evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability”.

A Planning Statement has been provided which sets out the case that the nursery has been accommodating more than 24 children as restricted by planning condition 3 of permission 010324/VAR.

Attendance registers for the nursery setting have been provided over a period of ten years, covering the month of March on a yearly basis from 2012 onwards. The registers demonstrate that the nursery has been accommodating more than 24 children at a time at the setting. In-fact, this points to up to 44 children within the setting at one time.

The Ofsted inspection reports for the setting have also been provided. Each report states that the setting accommodates up to 44 children between the ages of 2 and 5 years old.

The Statutory Declaration provided was declared by the applicant on 10/03/2022 and confirms that they are the Joint Owner of Little Tots Nurseries. It is stated that the site has permission to accommodate 24 children as per planning permission 010324/VAR. It is stated that the nursery has accommodated more than 24 children between 2012 and 2022. It is stated that in recent years the setting has accommodated less than 44 children in recent years due to the Covid-19 pandemic. The statement makes reference to the evidence submitted, highlighting that this weighs in favour of the application.

Regarding the Covid 19 period mentioned in the Statutory Declaration; the registers provided demonstrate that setting has been accommodating more than 24 children during March 2020, March 2021 and March 2022. The fact that the setting did not operate at the full Ofsted capacity of 44 as identified by the applicant within the Statutory Declaration, this is not considered relevant as the register do demonstrate that the setting has been accommodating more than 24 children from 2020 to 2022. Therefore, not complying with condition 3 of planning approval 010324/VAR.

The assessment of whether a Certificate of Lawfulness can be granted has been made based on the evidence above. In this case, it is considered that the sworn testimony of the applicant in combination with the evidence submitted attesting to the setting accommodating more than 24 children (and up to 44) over a 10 year period prior to the submission of this application is sufficient to pass the 'balance of probabilities test'. It is probable on the basis of the evidence that the setting has been in breach of condition 3 of planning approval 010324/VAR for a period in excess of 10 years.

The responses received from consultees do not conflict with the evidence submitted by the applicant. The response from Brighter Futures for Children in particular confirms that the setting has been registered for more than 24 children since the setting was registered with Ofsted in July 2007.

The LPA does not have any evidence to contradict the applicant's version of events and therefore, having regard to Section 191 of the Town and Country Planning Act (1990), the period in which enforcement action could be taken against the breach of condition is now expired.

This certificate therefore confirms that on the balance of probabilities that the nursery has been accommodating up to 44 children in excess of 10 years, thereby making this the lawful maximum number of children now permitted to attend the premises at any one time. This is based on the evidence provided and the applicant's

statement, as it has been sufficiently demonstrated that the nursery has been accommodating up to 44 children. It is also acknowledged that the evidence suggests that the nursery can only accommodate up to 44 children due to restrictions from Ofsted.

Recommendation

Grant

Having regard to Section 191 of the Town and Country Planning Act (1990), it is considered that sufficient evidence has been provided to demonstrate that the property known as 59 Prince of Wales Avenue, Reading, RG30 2UJ (identified in red on the plan attached to this Certificate) has, on the balance of probabilities, been accommodating up to 44 children at the day nursery in breach of Condition 3 of planning permission 010324/VAR continuously for a period in excess of 10 years.

Informatives

Positive and Proactive - Approval

